

EXPLANATION OF PROPOSED TECHNICAL AMENDMENTS TO ADWR'S RULES

ARTICLE 1. FEES

R12-15-151. Fee Schedule

R12-15-151(B)(4)(a) provides that the fee for a notice of intent to drill a well is \$10. R12-15-151(B)(4)(b) provides that the fee for an application for a permit to drill a new or replacement well is \$50. These fees were superseded by legislation enacted in 2003. That legislation established a fee of \$150 for filing a notice of intent to drill (\$100 if the proposed well is a small domestic well outside of an active management area and irrigation non-expansion area). A.R.S. § 45-596(I). The legislation established a fee of \$150 for filing an application to drill a new well or a replacement well in a new location. A.R.S. § 45-599(J). Because the fees are now set by statute, the Department proposes to delete R12-15-151(B)(4)(a) and (b).

ARTICLE 2. PROCEDURAL RULES

1. R12-15-207. Correction of Clerical Mistakes

R12-15-207 authorizes the Director or hearing officer to correct clerical mistakes in decisions, orders, rulings, process issued by the Department or other parts of the record, and any errors in the record arising from oversight or omission. The reference to a hearing officer is outdated because the Department is no longer allowed to use a hearing officer to conduct administrative hearings. Instead, unless the Director conducts the administrative hearing directly, the Department is required to use the services of the Office of Administrative Hearings, which assigns an administrative law judge to hear contested cases. *See* A.R.S. §§ 41-

1092.01(E) and (F). The Department proposes to amend R12-15-207 to delete all references to a hearing officer.

2. R12-15-224. Ex Parte Communications

R12-15-224 prohibits ex parte communications between a party to a contested case and the Director, a hearing officer, or other Department employee or consultant who is or may reasonably be expected to be involved in the decision-making process of the contested case. The reference to a hearing officer is outdated because the Department is no longer allowed to use a hearing officer to conduct administrative hearings. Instead, unless the Director conducts the administrative hearing directly, the Department is required to use the services of the Office of Administrative Hearings, which assigns an administrative law judge to hear contested cases. *See* A.R.S. §§ 41-1092.01(E) and (F). The Department proposes to amend R12-15-224 to delete all references to a hearing officer. Non-substantive changes will also be made to improve grammar and correct a typographical error.

**ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL
DRILLERS**

1. R12-15-805. Examination for well drilling license

R12-15-805(E) contains a reference to the National Water Well Association. After the rule was adopted, the name of the organization was changed to the National Ground Water Association. The Department proposes to amend R12-15-805(E) to delete “National Water Well Association” and replace it with “National Ground Water Association.”

2. R12-15-810. Authorization to drill

R12-15-805(A) provides that “upon mailing a duplicate copy of the notice of intent to drill as provided in A.R.S. § 45-596(D),” the director shall mail a drilling card to the designated well drilling contractor or single well licensee. This language is outdated because A.R.S. § 45-596(D) no longer provides that upon approval of a notice of intent to drill, the director shall mail a duplicate copy of the notice to the person submitting the notice. In 2002, the statute was amended to provide that upon approval of a notice of intent to drill, the director shall mail a drilling card to the well driller identified in the notice and shall mail notice of the issuance of the drilling card to the person filing the notice. The Department proposes to delete R12-15-810(A) because it is outdated and because the process for mailing a drilling card to the well driller is now covered in statute.

3. R12-15-816. Abandonment

R12-15-816(H) requires the installation of a surface seal in a well being abandoned if the well does not penetrate an aquifer. R12-15-815(H)(1) sets forth the specifications for the surface seal “[i]f the casing is removed from the top 20 feet of the well” R12-15-815(H)(2) sets forth the specifications for the surface seal “[i]f the casing is not removed from the top ten feet of the well” The reference to the top ten feet of the well in R12-15-815(H)(2) is incorrect. The rule should instead refer to the top 20 feet of the well. The Department proposes to correct this error by amending R12-15-815(H)(2) to change “ten” to “20.” Non-substantive grammatical changes will also be made.

4. R12-15-822. Capping of open wells

R12-15-822 contains three subsections. Due to a typographical error, the third subsection is labeled as subsection D. The Department proposes to correct this error by changing the label of the third subsection to C.

ARTICLE 12. DAM SAFETY PROCEDURES

R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam

The Department's rules governing dam safety procedures classify dams according to their hazard potential: high, significant, low and very low. R12-15-1206(B). The rules provide that applications to construct high, significant and very low potential hazard dams must include, among other things, proof of a right to impound and appropriate surface water, although the language requiring the proof differs slightly. *See* R12-15-1208(A)(9) and R12-15-1211(A)(1)(e). However, the rule governing applications to construct low potential hazard dams does not include such a requirement. *See* R12-15-1210(A). Consequently, as currently written, R12-15-1210(A) allows construction of a low hazard dam without a demonstration that the applicant has a permit to impound and beneficially use the surface water that will be impounded by the dam.

The Department believes that the absence of the requirement to include proof of a right to impound and appropriate surface water in R12-15-1210(A) is due to a simple oversight when the rule was drafted. The Department proposes to amend the rule to add such a requirement.